IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 317 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHANTA DAMJI MERCHANT

Versus

NARESHBHAI DESAI PATEL

Appearance:

1. Appeal from Order No. 317 of 1998

DAKSHESH MEHTA for appellants

RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 20/03/2002

ORAL JUDGEMENT

1. In this Appeal from Order filed under Order 43 Rule 1 (r) of the Code of Civil Procedure, 1908, appellants/original plaintiffs seek to challenge the order dated June 18, 1998 recorded below application Ex.5

in Special Civil Suit No.249 of 1991 by the learned 4th joint Civil Judge (S.D.)., Vadodara by which application Ex.5 filed by the present appellants against respondent restraining them from transferring or alienating the Duplex flat on 3rd floor in a multistoried building on plot No.7 bearing Survey No.1008 in the vicinity of Race Course of Vadodara City ('the suit property' for short) till the disposal of the suit, came to be rejected.

2. The suit in question is filed by the present appellants for relief of specific performance of agreement to sell dated June 10, 1986 in respect of the suit property. Alongwith the suit, application Ex.5 is also filed wherein relief is claimed to issue temporary injunction against the respondent restraining him from transferring or alienating the suit property till the disposal of the suit.

3. The learned trial Judge after hearing the advocates of the parties and on analysis, appreciation and evaluation of the evidence and more particularly the suit agreement produced at mark 4/2 has come to the conclusion that as the suit is time barred there is no question of prima facie case in favour of the appellants nor balance of convenience tilts in their favour and on the aforesaid premises the learned trial Judge has rejected application Ex.5 which has given rise to the present appeal.

4. I have heard Mr. Daxesh Mehta, learned advocate for the appellants. I have perused the memo of the appeal, the grounds set out therein and the impugned order and the pleadings and the documents, copies whereof have been supplied to me by Mr. Mehta during the course of his submissions.

5. It may be noted that the respondent has entered into an agreement on June 30, 1986 with the appellants for selling the suit property in consideration of Rs.2,10,000 and out of the said consideration Rs.1 lac was paid towards the part consideration and remaining amount was not paid by the appellants in spite of repeated requests made by the respondent and therefore it can be said that the appellants were never ready and willing to perform their part of the contract. The learned trial Judge has very categorically recorded the finding in this regard. The learned trial Judge has also recorded the finding that the suit filed by the appellants also suffers from the principles of delay and laches and therefore no equitable relief of injunction can be granted in their favour. The contention that the

respondent has not cleared the title of the suit property and therefore the appellants have not paid the remaining amount though an amount of Rs.8400/- was paid by the appellants to the respondent for the purchase of requisite stamp papers has no substance in view of the fact that the suit filed by the appellants is time barred and they are not entitled to equitable relief. Mr. Daxesh Mehta, learned advocate for the appellants is unable to dislodge the findings recorded by the learned trial Judge that the suit is time barred.

6. Seen in the above context, I do not see any valid reason or justifiable ground to interfere with the impugned order in the matter of discretionary relief which is rightly rejected by the learned trial Judge and hence the appeal deserves to be dismissed.

7. For the foregoing reasons, the AO fails and it is dismissed, however with no order as to costs.

8. At this stage Mr. Mehta, learned advocate for the appellants urges that direction may be issued to expedite the hearing of the suit as the suit is of 1991. There is substance in the request made by Mr. Mehta. In view of the aforesaid state of affairs and more particularly the suit is of 1991 the learned trial Judge before whom the suit is pending is hereby directed to expedite the trial of the suit and dispose of as early as possible and preferably on or before March 31, 2003. It is also made clear that no observation made by the learned trial Judge while rejecting the application Ex.5 and while confirming the said order by this Court shall be considered as an expression of opinion on merits and demerits of the trial. Findings recorded by the trial court and upheld by this Court are merely tentative in nature for deciding the application Ex.5 only. The learned trial Judge who shall conduct the trial of the suit shall decide the same on the basis of the evidence adduced and produced before him in accordance with law and uninfluenced of the fact that the learned trial Judge has rejected application Ex.5 and the said order is confirmed by this Court.

(A.M. Kapadia, J.)

(karan)